

**WHAT IT TAKES TO SUCCEED AT
COOPERATIVE ASSESSMENT:
A Negotiator's Perspective**

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THRESHOLD REQUIREMENTS

- Set Aside (Compartmentalize) Liability Defenses and Tactical Motives
- Define Shared Objectives
 - Don't automatically go for a home run
 - Acknowledge differences
- Design Process to Fit Objectives

I. SET ASIDE, BUT DON'T IGNORE, LEGAL ISSUES

- Defenses and Equities Must Be Considered at Some Stage of Negotiations
- Submerged Tactical Motives Can Infect Positions and Undermine Cooperation
- Put Defenses/Fairness Issues on the Table Early and Agree on Process to Address Them

II. DEFINE OBJECTIVES

A. Leave Pretenses at the Door

Trap No. 1: We have only shared objectives.

Trap No. 2: The answers will emerge from good science.

> Though science provides essential foundation, one *purpose* of cooperative assessments is to avoid exhaustive studies.

> Policy and legal positions have legitimate roles, best addressed in the open.

DEFINE OBJECTIVES - 2

B. What Do We Mean by “Cooperative Assessment”?

1. OK to do only part of assessment jointly:

- injury to specific categories of resources;
- all injury;
- identification/scoping of restoration options;
- comparison of alternatives;
- estimated restoration costs;
- compensatory restoration;
- interim lost values.

DEFINE OBJECTIVES - 3

2. Ok to take the process step by step
3. Consensus vs. joint work and separate conclusions

III. DESIGN PROCESS TO FIT

- Agree Up-Front on:
 - Decision points
 - Who will make decisions, and how, if consensus fails
 - Consequences of breakdown
 - Interface between cooperative assessment conclusions and settlement negotiations
 - If only part of assessment is “cooperative,” address process for separate technical work (e.g. information sharing, opportunities to comment)

DESIGN PROCESS - 2

- When There Are Serious Liability or Fairness Issues, Agree on a Distinct Process to Address Them.
 - Confine such issues to negotiations; keep them out of the assessment.
 - Usually not a problem in spill cases.
 - Test will come at complex, multi-PRP CERCLA sites:

DESIGN PROCESS - 3

- Recognize and Plan for Public's Role in Selection of Restoration Projects.
- Consider Using a Mediator or Other Third-Party Neutral.
 - Shared expert-evaluators
 - Choices tailored to issues.